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Supreme Court of the United States,

OCTOBER TERM, 1911.

No. 149.

MGR. JEREMIAH J. HARTY,
Appellant and Plaintiff-in-Error,

vs.

THE MUNICIPALITY OF VICTORIA.

13.

Brief For Appellant and Plaintiff-in-Error.

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Supreme Court of the United States,

OCTOBER TERM, 1911.

MGR. JEREMIAH J. HARTY, Appellant and Plaintiff-in-Error, *vs.* THE MUNICIPALITY OF VICTORIA.	No. 149.

BRIEF FOR APPELLANT AND PLAINTIFF-IN-ERROR.

Statement.

This is an appeal and a writ of error from a judgment of the Supreme Court of the Philippine Islands rendered on April 2d, 1909. The subject matter of the suit is a parcel of land known as the *plaza* (square) of the church of Victoria, situated in the Municipality of Victoria, Province of Tarlac, Philippine Islands.

The appellant is the duly appointed Roman Catholic Archbishop of the City of Manila, representing as such the property rights and interests of the Roman Catholic Church in the Philippine Islands and constituting a "unipersonal

corporation under the laws of the Philippine Islands." (Rec., fol. 1.)

The action was brought by the said Archbishop Monseigneur Jeremiah J. Harty against the Municipality of Victoria for the restoration of this property, and the suit was tried in the Court of First Instance of the Province of Tarlac. That court made findings of fact and law in favor of the Roman Catholic Church, and the Municipality therefrom appealed to the Supreme Court of the Philippine Islands, which reversed said decision. The property in controversy being of a value greater than $25,000, the plaintiff brings his appeal and writ of error to this court. (Rec., fol. 73.)

Facts.

In considering the facts of this case we would respectfully call the attention of the court to the opinion in the case of Ponce v. Roman Catholic Church (210 U. S., 296), in which the origin of ecclesiastical properties in the Spanish possessions is discussed with great erudition and the law governing them and their peculiar legal situation is exhaustively established. It is necessary to bear this situation in mind in considering the proof upon which the Court of First Instance held in favor of the claim of ownership made by the Church to the so-called Plaza.

The close relations existing between Church and State prior to the cession, the fact that the Catholic Church was the sole Church in the Philippine Islands and was engaged in performing various functions which in the United States would be regarded as governmental or public,

easily explain why it is not infrequently difficult to establish the existing property relations between the Church and the State as to certain lands or buildings.

The large ecclesiastical properties in the Philippines were owned and possessed altogether without title deeds, and even under modern Spanish registration laws church edifices were not subject to registration.

The complaint in this action is very short. It sets forth that the plaintiff is the legal administrator of all the property of the Catholic Church within the Archdiocese of Manila, that the Parish of Victoria, of the Roman Catholic Church, is and has been the owner of the parcel of land in question, the bounds of which are set forth; that such Parish was in possession of the land for more than sixty years prior to 1901, when the defendant Municipality forcibly took possession thereof, and now claims title thereto.

The answer contains a general denial and further sets up as an affirmative defense that the Plaza described was laid out at the time the Municipality was incorporated as a town and avers that as the Parish of Tarlac was established several years after the incorporation of the town it has no right to the Plaza now claimed by the plaintiff (Rec. fols. 3-4).

Some distinction was seemingly drawn between the Parish of Tarlac as a juristic entity and the Roman Catholic Church. It may be noted, however, that this distinction does not seem to have been insisted upon by the appellee and we submit that if it be shown that the property was duly handed over to ecclesiastical authorities for use by the Church, it is a matter of no legal import

whether technically the title be in any specific Parish or in some one of the authorities representing the Church generally. The property once dedicated to church use became irrevocably the property of the Church as a corporate body. As this Court said in the Ponce case (*supra*):

> "The historic continuity of the juristic conception, exemplified by the civil law, is maintained by the Partidas, the fundamental code of ancient Spanish law, whose provisions show that whoever built a church was required to provide it with an adequate perpetual endowment *as well as a site*, and refute any idea of a retention of ownership by the donor of the land or the contributors to the building." (210 U. S. 312).

A number of witnesses were examined on both sides and the history of the property recited according to the recollection of the older residents. No documentary evidence was introduced on either side save an immaterial annual report of the town throwing no light upon the question at issue.

The Trial Court made the following findings, which, we earnestly submit, were "justified by the evidence" and therefore under the laws prevailing in the Philippine Islands should not have been set aside by the Supreme Court. These findings are as follows:

> "(1) That the former owner of the land in question ceded the same to the town of Victoria, which in turn transferred it to the Parish of said town and, consequently, to the Roman Catholic Apostolic Church;
>
> (2) That the possession of the land in question by the Parish Church of Victoria dates back more than forty years. The Par-

ish priests of the said town of Victoria were the persons who actually occupied the land, cultivating the same, grazing and pasturing their horses, and planting trees thereon;

(3) That in 1901 the Municipality of Victoria occupied the said land by its own authority, without the consent of the plaintiff.

* * * * * * * *

It is, therefore, ordered that judgment be entered declaring that the Parish Church of Victoria, of the Roman Catholic Church, has a superior right to the possession of the land described in the complaint and directing that defendant vacate the land and pay the costs of this action." (Rec., fols. 5-6.)

The Supreme Court not only reversed this judgment but held that the municipality had absolute title to the land in controversy and so decreed.

While the testimony adduced by the plaintiff and the defendant appears to contain some contradictions, there is little real difference in the essential allegations of the witnesses, taken as a whole. The decision by this court does not necessitate a nice weighing of the credibility of the statements of the various witnesses but involves rather the correctness of the inferences drawn, by the Supreme Court of the Philippines, from the whole testimony. This is scarcely, therefore, a case like that of De la Rama *v.* De la Rama, 201 U. S., 303, in which the courts below differed as to the facts, and this court felt called upon to itself pass upon those facts; nevertheless, in either view, the jurisdiction of this court to determine the merits of the controversy is clear.

A reading of the whole record should indeed serve to persuade that the Court of First Instance was correct in its disposition of the controversy. It appears, in the light of the history of the Philippine Islands, that the right to this property was first questioned by the revolutionists, who were opposed to the ownership by the Church of any property and that the witnesses testifying against the Church belonged to the Sect established by one Aglipai, whose bitter animosity toward the ancient and established Church is so generally known as to need no comment.

The jurisdiction of the Supreme Court of the Philippine Islands is governed by Section 497 of the Philippine Code, which reads as follows:

> "In hearings upon bills of exception in civil actions, * * * the Supreme Court shall not review the evidence taken in the Court below, nor re-try the questions of fact except as in this section hereinafter provided, but shall determine only questions of law raised by the bill of exceptions. *But the Supreme Court may review the evidence taken in the court below, and, after giving due weight to the fact that the judge who tried the case saw the witnesses when they testified, affirm or reverse by a preponderance of the evidence, or modify by such preponderance, the judgment there rendered, as justice may require, in the following cases*: * * *
>
> "2. If the excepting party filed a motion in the Court of First Instance for a new trial *upon the ground that the evidence was insufficient to justify the decision*, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render

such final judgment, as justice and equity may require."

The jurisdiction of the local Supreme Court is consequently based upon the existence of "a preponderance of evidence" against the findings in first instance which evidence must be insufficient to justify the decision in order that such decision may be disturbed on appeal. It is not sufficient that the Supreme Court should have thought the evidence susceptible of an interpretation different from that put upon it by the trial court.

The appellant is not thus under the necessity of here demonstrating anything save that the evidence adduced below was sufficient to support the decision, and hence the Philippine Supreme Court should not have reversed the judgment.

The first and principal witness for the appellant was Casimiro Tanedo Miguel. Miguel is 67 years of age. He has always known the property in question because the land "where the church now stands was formerly a carabao corral" which "belonged to my deceased father." His father was the first founder of the town of Victoria "and ceded the land to the church," the church edifices and convent standing almost in the centre of the land. The Parish priest of Victoria continued in the quiet and uninterrupted possession of the Plaza up to the Revolution of 1896. Miguel's father apparently did not directly donate the land to the Church, but turned it over to the principal citizens who in turn gave it to the parish priest, when they had built a church upon this land. The witness was present at the formalities (Rec., fol. 18), at which the land was so turned over.

He somewhat pithily states the procedure usual in these matters, as follows:

> "I have always noticed that the principal citizens of the town, before making a requisition for a priest, would build the church and convent, and then the church authorities, if they deemed it convenient, would send a priest; and as the Commissioners of Victoria said that the people could support one they sent a priest and the principal citizens of the town turned everything over to him." (Rec. Fol. 18.)

The principal citizens of the town, at the time the property was turned over to the priest, were Captain Mariano Rigor and one Regino Rigor, Captain.

As the Municipality in nowise disputes the title to the Church edifices or the land upon which they are built, it is quite evident that the statement of this witness as to the turning over of these properties by his father and the leading citizens of the town is altogether accurate.

The sole question between the witnesses for the plaintiff and those for the defendant, therefore, resolves itself into one of metes and bounds. Is the above space about the church buildings, here denominated the Plaza, also the property of the Church, or are the property rights of the Church limited to the land enclosed within the four walls of the two edifices? Is the Supreme Court justified in presuming that Tanedo made two grants, one to the Chuch, the other to the town. The claim of the Church is that the property was a unity, the ownership both of the land upon which the buildings stand and the surrounding lands resting on the same title and having the same source.

The testimony of the succeeding witnesses throws light upon this, showing as it does that the whole Plaza property was cultivated by the priests, who gathered the harvests, a fact which if it does not conclusively prove ownership at least effectually negatives the somewhat fanciful theory that Tanedo intended to donate it to the town.

The land about the church was evidently thus designed not only to form a necessary appendage to the church edifices but to also supply a means for the support of the clergy of the parish.

MARIANO RIGOR, fifty-three years of age, was a resident of Victoria. He testified that the priests had planted the trees in the church plaza and that some of the priests had fenced the church plaza in to protect the crops and the places where the horses were kept. At the time of the revolution the priests left Victoria.

Rigor who was Captain or Cabeza de Berangay (Head Tribesman) knows that public celebrations were held there under the control of the priests. He also knows that at one time a certain Governor went there and ordered the fence, "*made by the priests*," to be torn down. What followed throws light upon the general situation and would go far to justify the attitude of the Court of First Instance which had the opportunity of seeing the witnesses and to judge of their credibility:

> "They were going to build a market at that place; the priests objected to it and closed the gate; the governor then went there and ordered the fence removed, and the priest had the fence repaired again, and it was not very long afterward before an order was received by the Captain, and we were directed to go to

Tarlac and report to the Prosecuting Attorney. *The Prosecuting Attorney asked us who was the owner of the plaza, and we told him that it belonged to the church; and after we told him that the plaza belonged to the church the idea of establishing a market there was abandoned"* (Rec., fol. 29).

Regino Rigor, sixty-four years of age, was also a Cabeza de Berangay some forty years before. He also testified that when the first priest arrived there (Victoria) the principal citizens of the town turned the plaza over to him, also the church and convent, and after the land was delivered to the priest, he (the priest), ordered the same sown in rice, wheat, papaya and other fruits (Rec., fol. 35).

The present parish priest of Victoria, Cirilo Vegara, testified that when he arrived in Victoria during the revolution, the revolutionary government was in possession of the church plaza and at the time he did not take possession but that later on, after the revolutionists ran away and vacated the church property, he took possession of it, at the end of 1899 or 1900 (Rec., fol. 24).

The parish priest of the neighboring town of Tarlac testified that he had known the town of Victoria, the church and convent since he had become the parish priest at Tarlac, some eighteen years ago, and that he had occasionally officiated in Victoria as priest. He knew that the priests had been in possession of the church plaza, to the exclusion of all other claims of ownership, up to the time of the Revolution.

No other witnesses were introduced for the plaintiff.

On behalf of the defendant there testified one Ferman Tolentino, sixty-eight years of age. He

states that the barrio (subdivision) of Tarlac was converted into a town some fifty years before and that when the place was converted into a town no plaza existed upon the land in controversy; that the plaza was laid out when the first Captain was appointed, *at which time, while there was a church there,* no parish had as yet been organized. The church and the convent had been built "by us, and then we petitioned for a priest to come to the convent." He testified that the plaza belonged to the town, and bases this opinion on the fact that he was appointed by the Captain of the town to watch the men who were planting the trees, which were planted by the order of the Captain; that the people of the town "used that plaza for all celebrations by the town, such as dramatic plays, fireworks, etc."

His testimony as to the crops sown on the plaza strongly bears out the Church's position because although he says the people of the town sowed the rice in the plaza and that the rice was grown there with the knowledge and consent of the captain of the town, yet, when asked: "Q. And who gathered the crop?" he answers: "The acolytes."

Martin Caita testified that "the town was established first and then we built the church" (Rec., fol. 45). The plaza was not turned over to the church. The people of the town always used that plaza for public festivities. He was asked:

> "Q. Do you know whether that priest ever claimed any right to the possession of that plaza?
>
> A. I was told that he surveyed the plaza.
>
> Q. Do you know whether that priest ever claimed any title to the place—please answer my question?

A. We would not have permitted it." (Rec., fol. 46.)

The witness has not been in that church "*since the Filipino Church" was built.*

MARIANO RICOR infers that the plaza has always belonged to the town because the town always used it for public celebrations, such as dramatic plays, greased poles, and other forms of recreation. He also belongs to the Filipino Independent Church. Even this fact, however, has not completely obscured his recollection, since he testifies:

"Q. Do you remember when the plaza was sown in rice, corn and wheat?

A. Yes, sir, I remember.

Q. *Who reaped the harvest of wheat, rice and corn?*

A. *Father Mariano.*" (Rec., fol. 48.)

PEDRO MARIANO is the Municipal President of Victoria and retained the attorneys defending this suit. The Municipal Council met in 1901 ("long before my time") for the purpose of considering the question as to whether the plaza here in dispute is a public square or is private property. When the witness took charge of the presidency of the town he found annual reports of his predecessors which show the Municipality to have been in possession of the plaza since 1855. The particular document to which he refers is that of 1894, but this document he was unable to bring with him, important as it would seem to be if he accurately reported its contents.

The nature of defendant's testimony generally is well instanced by that of this witness, the President of the town, who should have had every

means for obtaining definite information in regard to the disputed question and whose zeal in the defendant's cause was not doubtful. His testimony concludes as follows:

> "Q. Did the municipality use the whole of the plaza bounded by the four streets, sir?
> A. *The municipality did not use it, but owned it.*
> Q. The whole plaza?
> A. Yes, sir.
> Q. Also the church?
> A. *Not the church.*
> Q. But the whole plaza, up to the wall of the church?
> A. The site where the church stands is separated from the land owned by the municipality.
> Q. Where does the property of the church begin and where does the land of the municipality end?
> A. The land where the church stands belongs to the church.
> Q. And all the land which is not occupied by the church and convent belongs to the municipality, is that it?
> A. Yes, sir." (Rec., fols. 51-52.)

The testimony of this witness is significant in showing that the question of ownership was first raised in 1901. It is earnestly submitted that a careful scrutiny of the testimony of the defendant's witnesses will show that it contains no statements of actual facts controverting the findings of the trial court. Vague statements of ownership are, when analyzed, seen to rest upon no objective fact save that the people used the plaza for their celebrations. It is, of course, matter of general knowledge that practically all the feasts and celebrations in the Philip-

pine Islands were church festivals, held under the auspices of and with the concurrence of church authorities and hallowed by centuries of religious custom. There can be little doubt that the church allowed its plaza to be used for all these public functions, but surely no inference of title in the municipality can be drawn from this fact.

The real situation undoubtedly is, that a large plot of land used by Miguel, father of the witness, as a carabao pasture land, was turned over to the town in about the year 1855 for the purpose of church buildings and church purposes. The people of the town erected thereon a church and a convent; the people and the priests planted trees and laid out a church square; that church square in whole or in part was used for cultivation of rice and other crops by the priests, who gathered in these crops through the acolytes, and some, or at times all, of the plaza was used for church processions and local festivals generally. The Supreme Court totally ignores the settled custom of donors of church property presenting adjacent land sufficient for burial ground, garden, stable, etc.

No question of ownership would have arisen had it not been for the Revolution and certain changes in political, social and religious conditions, no uncommon manifestation of revolutionary spirit since 1789, consisting in attacks upon the Church organization and efforts to confiscate its properties. It is clear enough that the witnesses for the defendant were actuated by a certain animus, easily explicable on the ground that they have joined the so-called Filipino Church, which, as the history of these litigations indicates, has been endeavoring to acquire properties be-

longing to the Roman Catholic Church. Perhaps the uniform lack of success with which these efforts have so far been attended have led to an attack of this kind in the name of a municipality for the possession of property naturally and necessarily pertinent to these church edifices, originally destined to general church use and which the priests had evidently always used for the benefit of the people of their parish.

POINT I.

The findings of the Court of First Instance fully justified the judgment in favor of the Church.

The judgment of the Supreme Court of the Philippine Islands reversing the trial court is contrary to the weight of evidence, incompatible with the historic situation, and based on a mere inference grounded on an erroneous assumption.

Upon the testimony as above outlined, the Supreme Court of the Philippine Islands not only reversed the judgment of the Court of First Instance but entered a judgment declaring that

> "all that tract of land *not occupied by the church of the town of Victoria and its parish house* constitutes the public squares or plaza of the said town, devoted to public use, and the defendant is hereby acquitted of the complaint filed by the representatives of the Roman Catholic Church, without special award as to the costs of both instances." (Rec., fol. 71.)

The Supreme Court of the Philippine Islands did not, therefore, content itself with merely holding that the plaintiff had failed to make title, but, notwithstanding the superlatively diaphanous testimony of defendant's witnesses, went to the extent of holding that the title to the plaza was in the town. In other words, the Supreme Court holds that not only plaintiff's testimony is too weak to sustain its case, but, that the preponderating weight of the testimony of Messrs. Tolentino & Co. was sufficient to establish title in the defendant.

It is fair, however, to say that the Court does not predicate this result entirely upon the evidence of these witnesses. The judgment of the Court is largely based upon the existence of an alleged custom that

> "a certain amount of land was, upon the laying out of towns, always reserved for plazas, commons, and special and communal property, and as it is unquestionable that this said large space of land was left vacant in the center of the town of Victoria when it was constituted as a civil town, more than twelve years prior to the appointment of a permanent curate therein, there are good grounds to suppose that the late *Vincente Tanedo donated the land now occupied by the church and parish house in said municipality for religious purposes, or to the church, but not to the parish curate, because at the time there was no curate at the new town of Victoria.*" (Rec., fol. 68.)

We are unable to see the relevancy of this latter statement, since it is quite immaterial whether Tanedo's gift was to the church or the parish curate. His purpose was that the

property should be used for religious purposes by the only church of which he knew anything. It is very safe to assume his complete indifference as to what particular administrative subdivision of that great organization should have attributed to it the management of the property so donated.

There is nothing in the record to show that the people of the town did not establish another and really public plaza, as the court says it was the custom to do; there is nothing, in other words, to show that the land in question was the only plaza that was established, or even that it was in the center of the town, as the court says it was. There is thus a palpable fallacy in the sillogistic process by which the learned court reaches its conclusion. And, with respect to the alleged custom, there is no evidence in the case whatever of its existence. In Section 275 of the Code of Civil Procedure it is provided that the matters that may be judicially noticed shall be—

> "The existence and territorial extent of states and of the several islands forming the Philippine Archipelago, their forms of government and symbols of nationality, the laws of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the United States and of the Philippine Islands, the seals of the several departments of the government of the United States and of the states of the Union, and of the Philippine Islands, public and private, and of official acts of the legislative, judicial and executive departments of the United States and of the Philippine Islands, the laws of nature and the measure of time, the geographical divisions and political history of the world, and all similar matters of public knowledge shall be judicially recog-

> nized by the court without the introduction of proof."

It does not seem to counsel that the custom referred to is one that comes within the scope of this provision; but, if it is, then the court ought also to have taken judicial notice of the corollary to it—that where plazas are established as *public* ones, the church buildings are not located in the middle of the land, but facing them, on a street at the side. That is a general custom. The court ought also to have taken notice of that other custom in all the old Spanish towns of combining religious and public celebrations—of the fact that they were one and inseparable. The testimony as to this only instance of public use that was mentioned by witnesses for the defense, and on which so much stress was laid, would then have lost its significance, except, indeed, to show that the plaza was, even in that respect, used as a church plaza as the donor intended.

The Supreme Court having reached the above cited conclusion, continues:

> "Even though all *the remaining space* of land which now forms the great plaza of the town of Victoria had been owned by the said *Tancdo, it must be presumed that he waived his rights thereto for the benefit of the townspeople, since from the creation or establishment of the town, down to the present day, all the residents, including the curate of said town, have enjoyed the free use of said plaza;* it has not been satisfactorily shown that the municipality or the principals of the town of Victoria had donated *the whole of said land* to the curate of Victoria or to the Catholic Church, as alleged, nor could it have been so donated, it being a public plaza destined to

> public use, and was not of private ownership or patrimony of the town of Victoria, or of the Province of Tarlac." (Rec., fol. 69.)

Two propositions seem to be contained in this statement:

First. That Tanedo waived his rights to the remaining land for the benefit of the townspeople.

Second. That this surmise as to Tanedo's intent is wholly based upon the use of the land by the townspeople.

As to the first of these propositions, we can only say that it rests on no evidence whatever, but is rather matter of "theory and discourse." Tanedo's son testified that the whole property was turned over to the Church, and the Court admits that some of it was. The testimony of the other witnesses on both sides shows that church edifices were erected on the land in question and that the priests cultivated their crops thereon. The Supreme Court must, therefore, reach its conclusion differentiating between the land actually built upon and the remainder, wholly upon the ground that the people have enjoyed the free use of said plaza for their celebrations. We assume that it must be generally admitted that church plazas, throughout Spanish possessions, were freely enjoyed by the people of the parish, for all of whose benefit the parish and church edifices themselves existed. As well contend that the church structures belonged to the Municipality because all persons were always welcome to their use and their doors were always open. The Supreme Court's position is very much akin in

this respect to that assumed by the municipality of Ponce. The Court's major premise thus rests upon the misinterpretation of admitted facts.

The second proposition is purely gratuitous in that it assumes the whole question in controversy. If the property in litigation were originally donated by Tanedo to the town, laid out as a public plaza and belonged to the municipality in a public capacity there could have been no matter for litigation. There is not the slightest evidence, however, that this entire piece of land, ceded by Tanedo, was ceded for any other purpose than that of the church, that the municipality ever understood it otherwise, or that the distinction attempted to be drawn by the witnesses for the defence and adopted by the Philippine Supreme Court, that the church owned the land covered by the four walls of the edifices and no other has any foundation. That Tanedo divided his land between church and state has no foundation in the testimony and savors of anachronism; it is a good instance of *après coup* reasoning. If "it must be presumed that he, Tanedo, waived his rights thereto for the benefit of the townspeople," such presumption must necessarily be predicated upon grounds existing neither in the record, in logic, nor in history.

If the land in controversy were originally a public plaza, the church was then built upon such public plaza and the church authorities are tenants at sufferance of the Municipality of Victoria. Should the shifting of political majorities result in putting the followers of Aglipai in power, why should they not be in position to make such claim? The logic of the Supreme Court certainly would countenance such a claim. For some reason the

Supreme Court of the Philippine Islands seems to shrink from this seemingly inevitable conclusion, but has offered no reason for the distinction maintained between the two parcels of land unless it be the two suppositious grants gained from the assumedly prescient Tanedo. This may or may not be a piece of wise constructive statesmanship on their part but can find no warrant in legal reasoning which alone can concern us here.

The view of the Court below may not unfairly be thought to rest upon the idea that, upon the divorce of Church and State, those proportions of the church property which were not used directly, solely and continuously for actual religious worship should pass to the State. This is a political theory which has not been sanctioned by our laws nor by this Court.

The juristic personality of the Church, its right to possess and to continue in the possession of all property, acquired either by prescription or originally donated to its use, has been established by the action of the executive governments in these Islands and sanctioned, after exhaustive review of the whole situation, by this court in the case of Ponce *v.* Roman Catholic Church (210 U. S., 296). It is the American legal doctrine and contains nothing novel (Terrett *v.* Taylor, 9 Cranch., 43). This view is not only "juristic" but has saved us from those century old conflicts between Church and State, which have figured so disastrously in European history as a result of the secularization process, conflicts, which our American experience proves, could probably have been avoided.

The gravamen of the decision of the Supreme Court is contained in the last paragraph of the opinion.

> "Certain it is that the plaintiff has not proven that the Catholic Church or the parish of Victoria was the owner or proprietor of the said extensive piece of land which now forms the public plaza of said town, nor that it was in possession thereof under the form and conditions required by law, *inasmuch as it has been fully proven that said plaza has been used without let or hindrance by the public and the residents of the town of Victoria ever since its creation.*" (rec., fol. 69.)

It is thus clear that this case does not depend upon the nice weighing of conflicting testimony testing the credibility of the respective witnesses. The judgment of the Court is in reality predicated wholly upon the undisputed fact that the church plaza has been used by the public and the residents of the town of Victoria for various celebrations.

We respectfully submit that the inference from this fact drawn by the Supreme Court is utterly unwarranted. The residents of the town of Victoria were all members of the parish. The use of this plaza for the purpose of their celebrations was natural and proper, and the fact that the priests sanctioned it, or even encouraged it, in no wise militates against the title of the Church, which has always held its property in trust for its members.

We respectfully ask this Honorable Court, therefore, not to approach this case with the very natural disinclination to deal with conflicting statements of fact, but rather to look at the whole record as presenting one of those problems necessarily arising upon the divorce of church and state in our Insular possessions, the essential elements of which are not in dispute.

If the principles heretofore applied as to admitting the ownership in the Church to all that property over which she exercised control in her own way, for her own purposes, through her own authorities, be adhered to, the judgment of the Supreme Court of the Philippine Islands must be reversed. The judgment of that Court is incompatible with the principles laid down in the case of Ponce *v.* The Roman Catholic Church (*supra*); it rests upon an illogical inference from an unwarranted assumption and evinces a misconception of the entire situation.

All of which is respectfully submitted this 5th day of February, 1912.

FREDERIC R. COUDERT,
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Of Counsel for Appellant.

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JAMES H. McKENNEY,
Clerk.

No. 18.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

MGR. JEREMIAH J. HARTY, APPELLANT AND PLAINTIFF IN ERROR,

v.

THE MUNICIPALITY OF VICTORIA.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR DEFENDANT IN ERROR AND APPELLEE.

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In the Supreme Court of the United States.

OCTOBER TERM, 1912.

MGR. JEREMIAH J. HARTY, Appellant and Plaintiff in Error,
v.
THE MUNICIPALITY OF VICTORIA. } No. 13.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR DEFENDANT IN ERROR AND APPELLEE.

STATEMENT.

The plaintiff below, in his representative capacity as legal administrator of the property of the Roman Catholic Church, brought an action in the Court of First Instance of the Province of Tarlac, Philippine Islands, against the Municipality of Victoria, praying to have a parcel of land known as the Plaza of the Church of Victoria, and then in possession of said Municipality, declared the property of the church (R. 1–2). The Court of First Instance held that the plaintiff below had a superior right against the defendant to the possession of the land (R. 4). This

judgment was reversed by the Philippine Supreme Court, and to review this latter judgment, the case was brought here both on writ of error and by appeal (R. 55, 56).

FACTS.

The land here in controversy is the public square surrounding the church and parish-house (*convento*) of the town, and apart from the land on which the church and parish-house are situated (fols. 2, 3, 66–67).

Concededly, Victoria was established as a town in 1855 (R. 31, Exhibit "I"), and the plaza then laid out as an integral part of the town. It is also undisputed that the plaza was freely utilized for all public celebrations customary in a Spanish town, religious as well as social (fols. 44, 29, 35, 46, 41). The character of the property as *public* property, resulting from its dedication to public uses, was sought to be met by testimony that it was subsequently donated, *in pais*, to the parish by the principal men of the town (*principales*), without show or suggestion of their authority (fols. 18–19); that trees were planted partly by priests and partly by the municipal authorities, and that part of the land was cultivated, and crops gathered by the priests and acolytes (fols. 26, 43, 48, 29, 41, 45, 46). In other words, there was disputed testimony of fact and assertion of possession by the plaintiff (fols. 17, 38) met by counter testimony and assertion (fols. 41, 44, 47, 54, 51). The evidence in the case is much too disputed and indecisive even to help us in ascertaining the strong psychologic factor

of association in a community's mind as to the fact of possession. (*cf. Cariño* v. *Insular Government*, 212 U. S. 449, 459.)

The testimony was thus summarized by the Insular Supreme Court:

> From the evidence presented by both parties it appears that the town of Victoria, which was formerly only a barrio of the town of Tarlac and known as Canarum, was converted into a town in 1855, and named Victoria; to this end they must have laid out the streets and the plaza of the town, in the center of which was situated the church and parish house from the commencement, and at the expiration of about twelve years the parish of said town was constituted and the priest who was to perform the office of curate was appointed; that from the very begining the large tract of land that surrounds the church and the parish house was known as a public plaza, destined to the use of all the residents of the recently founded town; public performances and religious processions were held thereon without hindrance either on the part of the local authorities or of the curate of said town.
>
> It must be assumed that the principal residents of the old barrio, being interested in the conversion of the barrio into a civil town, arranged in such a way that the barrio, as the center of the future town which was subsequently called Victoria, should have streets and a public plaza with its church and parish house, and also a tribunal or building destined for the use of the municipality and the local official at that

> time called the governadorcillo and later on capitan municipal, as has occurred in the foundation of all the towns in these islands, under the old administrative laws. (R. 39.)

In the light of this evidence and the applicable principles of law, the court below reached this conclusion:

> Certain it is that the plaintiff has not proven that the Catholic Church or the parish of Victoria was the owner or proprietor of the said extensive piece of land which now forms the public plaza of said town, nor that it was in possession thereof under the form and conditions required by law, in as much as it has been fully proven that said plaza has been used without let or hindrance by the public and the residents of the town of Victoria ever since its creation. For the above reasons it is our opinion that the judgment appealed from should be reversed, and that it should be held, as we do hereby hold, that the whole of the land not occupied by the church of the town of Victoria and its parish house, is a public plaza of the said town of public use, . . . (R. 40.)

ARGUMENT.

We shall argue:

1. The value of the land involved in this action does not exceed twenty-five thousand dollars, and the case should, therefore, be dismissed.

2. In any event the appeal must be dismissed. The case is reviewable only by writ of error, and the disposition of questions of fact by the court below is not open to consideration here.

3. The plaza is an essential part of the organic scheme in the establishment of a pueblo. It forms an indispensable portion of the municipality's public property and, as such, is neither alienable nor prescriptible.

4. If reviewable under any circumstances, the finding of the lower court that the plaintiff had no established claim of ownership to the public plaza is amply supported by evidence and should not be disturbed.

I.

The value of the land involved in this action does not exceed twenty-five thousand dollars, and the case should, therefore, be dismissed.

The jurisdiction of this court to review judgments of the Supreme Court of the Philippine Islands is limited to cases,

> in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; . . . (Sec. 10, Act of July 1, 1902; c. 1369, 32 Stat. 695).

The judgment of the Insular Supreme Court here sought to be reversed, involves and concerns itself solely with the ownership of the land constituting the plaza, exclusive of the church and parish-house (*convento*) (fol. 71). No evidence bearing upon the value of this contested land appeared until the review of the judgment was sought. Affidavit was then

filed by the plaintiff deposing that the parcel of land described in the complaint is of the value of $25,000 (fol. 73), adding that the value of the church buildings is $25,000; that these buildings are rendered valueless by the decision of the Insular Supreme Court "because by said decision the said edifices are deprived of free egress and ingress, and are left without any adjacent land," and that, therefore, the value of the land in controversy exceeds the sum of $25,000 (R. 41). The attorneys for the plaintiff deposed that the land described in the complaint is of the value of $30,000; that the church and parish house are of the value of $25,000, and that the value of the property in controversy exceeded $25,000 (R. 42). No affidavits were filed on behalf of the Municipality. After a hearing, one of the Philippine Supreme Court justices concluded that the value in controversy in this case exceeded $25,000, and allowed the appeal. Judge Carson, however, who reached this general conclusion, made this specific finding:

> This holding is announced notwithstanding the *fact that by admission of counsel for plaintiff, it appears that the value of the parcel of land for which judgment was rendered in favor of the defendant municipality,* exclusive of the value of the adjoining parcel of land with the church and convent situated thereon, title to which is recognized to be in the plaintiff, and damages thereto resulting from the aforesaid judgment, does not exceed Twenty-five Thousand Dollars ($25,000.00) (R. 47, italics ours).

It is submitted that the court's finding of fact invalidated its conclusion that the jurisdictional amount, to allow of review here, is present. The real estate, which *alone is involved or brought into question here* by the issue of the case, the proof, and the judgment sought to be reviewed, is "the parcel of land described in the complaint," (affidavit of Archbishop Harty, R. 41), and for which the judgment was rendered in favor of the defendant Municipality (R. 47); and the value of that land, according to the finding of the judge granting the writ of error, does *not* exceed $25,000. Not the remotest possible claim of incidental damages was made in the pleadings, nor in the lower court, and none can possibly be urged here. For by the judgment of the Insular Supreme Court, which is sought to be reversed here, it is held that the land, which alone is in dispute, and which excludes the land occupied by the church and its parish-house, constitutes the public square or plaza of said town, devoted to public uses (fol. 71). Necessarily this carries with it the right of free ingress and egress to the church edifices. Therefore, their use and value are unaffected by the decision.

On this record, it would seem to be clear that the plaintiff has failed to establish that the requisite jurisdictional amount exists, and the case should be dismissed, (*Enriquez* v. *Enriquez*, 222 U. S. 123; Same v. Same, *ibid*, 127).

II.

In any event the appeal must be dismissed. The case is reviewable only by writ of error, and the disposition of questions of fact by the court below is not open to consideration here.

It is now settled that writ of error is the proper method of review in cases arising from the Philippines, except suits of an equitable nature. *Cariño* v. *Insular Government*, (212 U. S. 449); *Tiglao* v. *Insular Government* (215 U. S. 410, 414); *Jover* v. *Insular Government* (221 U. S. 623, 635). It was assumed, as of course, that writ of error is the appropriate method for reviewing an action like the present, for the recovery of land, in *Santos* v. *Roman Catholic Church*, (212 U. S. 463), and in *Ker* v. *Couden*, (223 U. S. 268). The appeal, therefore, must be dismissed.

It follows that questions of law only are here open. Concretely, the correctness of the decision of the Philippine Supreme Court, in reversing the conclusions of the Court of First Instance "by a preponderance of the evidence," according to section 497, Act 190 Philippine Commission, as amended (Compilation, Acts of the Philippine Commission, sec. 2929, p. 924), raises no question of law, and cannot be here considered. This was so ruled in *Behn* v. *Campbell* (205 U. S. 403, 408-409). In fact the whole theory of the plaintiff-in-error's case here rests upon a consideration of questions not open for review. His whole argument is a justification of the findings on the facts of the Court of First Instance. (Plaintiff

in Error's Brief, pp. 6 and 15.) The Insular Supreme Court, in the exercise of its appropriate jurisdiction, has set aside those findings. The plaintiff in error now asks this court to review those questions of the balancing of facts, the appropriateness and the extent of inference from facts, which are the province of triers of facts, but raise no issues of law, (*Behn* v. *Campbell*, *supra*.) On this ground the case should be dismissed for want of jurisdiction.

III.

The plaza is an essential part of the organic scheme in the establishment of a pueblo. It forms an indispensable portion of the municipality's public property and, as such, is neither alienable nor prescriptible.

Indisputably the Town of Victoria was founded in 1855. (R. 31.) It was established, therefore, under the Law of the Indies, and in conformity with the traditional customs of the people. The plaza was laid out when the town was founded; it was the heart of the town. It is common knowledge that the plaza or public square forms the center of the life of every Spanish or Spanish-American town. It is a part of the public asset, devoted to public functions, essential to the religious and social life of the town. As the court below said:

> It must be assumed that the principal residents of the old barrio, being interested in the conversion of the barrio into a civil town, arranged in such a way that the barrio, as the center of the future town which was subsequently called Victoria, should have streets and a public plaza

with its church and parish house, and also a tribunal or building destined for the use of the municipality and the local official at that time called the governadorcillo and later on capitan municipal, as has occurred in the foundation of all the towns in these islands, under the old administrative laws. . . . (R. 39)

Thus we find this provision in Law 9, Title 7, Book 4 of the Compilation of the Laws of the Indies:

The great square where the town is to be commenced, if on the seacoast, must be made at the landing-place in the port, and if an inland place in the middle of the town: its form of a parallelogram, which shall be at least one and one-half times as long as it is wide, in order to be more suitable for equestrian and other festivals: its size being proportionate to the number of inhabitants of the town, and consideration being had for future growth, let it not be less than two hundred feet wide and three hundred feet long, or more than eight hundred feet long and five hundred and thirty-two feet wide; it being of fairly good proportion if six hundred feet long and four hundred feet wide: From the great square let there be four principal streets, each to start from the middle of each side; and in addition thereto, two to start from each corner: the four corners to look toward the four principal winds, for if the streets leave the great square in this wise they will not be exposed to the four winds, which would be highly incommodious: All houses surrounding the great square, and on the four principal streets that are to start from it, to have arcades for the convenience of traf-

> fickers wont to gather there: the eight streets departing from the four corners to run free, without running into the arcades,[1] . . .

Similar provisions of the Law of the Indies are set forth in detail in *Municipality of Catbalogan* v. *Director of Lands*, (17 Philippine, 216), from which the court reaches the following conclusions as to the essential conditions affecting the establishment of a *pueblo:*

> It may be affirmed that years afterwards all the modern pueblos of the Archipelago were formed by taking as a basis for their establishment the barrios already populated by a large number of residents who, under the agreement to build the church of the new pueblo, the courthouse, and afterwards the schoolhouse, obtained from the General Government the administrative separation of their barrio from the pueblo on which it depended and in whose territory it was previously comprised. In such cases procedure analogous to that prescribed by the Laws of the Indies was observed.
>
> For the establishment, then, of new pueblos, the administrative authority of the province, in representation of the Governor General, designated the territory for their location and extension and the metes and bounds of the same; and before allotting the lands among the new settlers, a special demarcation was made of the places which were to serve as the public square of the pueblo, for the erection of the

[1] All the renderings into English from Spanish or French texts have been made by Mr. Frank L. Joannini, translator of the Bureau of Insular Affairs.

> church, and as sites for the public buildings, among others, the municipal building or the *casa real*, as well as of the lands which were to constitute the commons, pastures, and *propios* of the municipality and the streets and roads which were to intersect the new town were laid out, as may be seen by the following laws: (17 Philippine 220).

In other words, the plaza, just as the court house and the land on which it is situated involved in the *Catbalogan* case, was necessary and indispensable for the existence of the *pueblo* (17 Philippine 216, 227).

It is idle to suggest that there was no evidence as to the custom attending the laying out of the plaza. The custom is of the essence of community life in the Philippines, imbedded in the law, and even more ingrained in the social demands and habits of the people. Of course, this Court will take judicial notice of this custom, as above set forth, by the Philippine Supreme Court.

The plaza then is communal municipal property. The function it fulfills makes it inevitable that the law should fix upon it the character of public property. Thus law 9, title 28, partida 3, provides:

> Separately, all water sources, squares where fairs and markets are held, places where meetings of councils are held, and sandy places on the banks of streams, and other *éxidos* [uncultivated lands belonging to the town] and horse race courses, and forests, and grazing lands, and all other such places, that are established and

granted for the commonweal of each City, or *Villa*, or Castle, or any other place are the *common property* of each such City or *Villa*. So that every man there dwelling may have the use of all these things aforesaid: and they are common to all, as much to the poor as to the rich. Moreover those who dwell in another place can not make use thereof against the will and prohibition of those who dwell therein.

The Civil Code lays down the same rule:

> The property of provinces and of towns is divided into property for public use and patrimonial property. (Article 343.)
>
> Provincial and local roads, *squares*, streets, public fountains and waters, walks, and public works of general service, paid for by the towns and provinces are property for public use.
>
> All other property possessed by either is patrimonial property, and shall be governed by the provisions of this Code, unless otherwise provided in special laws. (Article 344, *ibid.*)

To the same effect, see 2 Sanchez Roman, Estudios del Derecho Civil español 486.

Being devoted to the public use, and fulfilling a public necessity, it is to be expected that the property is neither alienable nor prescriptible, and such is the law.

Law 7, title 29, partida 3, provides:

> No man can acquire by time any plaza, nor street, nor road, nor *érido* [uncultivated land belonging to the town], nor anything else of a similar character which is of common use by the people of a place, city, etc. . . . (3 Gutierrez Fernandez, 59).

To the same effect is law 15, title 5, partida 5:

> A freeman, and a thing which is sacred, or religious, or holy, or a public place, as well as *plazas*, and roads, and éxidos [uncultivated lands belonging to the town], and rivers, and the springs which belong to the King, or to the common property of a council, cannot be sold nor alienated. . . .

And so the court below ruled that plazas destined to the public use are not subject to prescription, under authority of article 1936 of the Civil Code, providing that only objects of commerce are capable of prescription. From the above, it is clear that the plaza is *not* an object of commerce. And so Laurent, quoted in Manresa, holds:

> The public domain is governed by the same principles, whether it be of the State, the province or the municipality. It is always out of commerce, and therefore is inalienable and not prescriptible. . . . (Manresa, vol. 3, p. 100.)

IV.

If reviewable under any circumstances, the finding of the lower court that the plaintiff had no established claim of ownership to the public plaza is amply supported by evidence and should not be disturbed.

1. Indisputably the plaza was originally public property owned by the municipality (fols. 17, 35). Since the property was a public square, the burden is on the plaintiff to prove that it had ceased to be such by reason of some action taken by competent authorities to that end, or by prescriptive user, if

under any theory such public property is prescriptible. (*Nicolas* v. *José*, 6 Philippine, 589, 591; *Whitney* v. *United States*, 181, U. S., 104, 117.)

2. The plaintiff's claim of ownership rested (a) on an alleged transfer to the local priest by the *principales* of the *pueblo* and (b) on certain acts of user on behalf of the church.

(a) When the town was founded, the necessary property for communal purposes was donated by some of the citizens. Later, when the parish was established, property was donated to the church for church purposes (folios 16, 17, 18, 28, 31, 35, 37). The plaintiff's case rests upon the claim that the properties so donated to the church included the plaza in controversy which at all times was uninterruptedly used for the various municipal functions which the Spanish plaza serve. The record shows no instrument of title to support the claim, but very tenuous evidence of a transfer *in pais*, wholly lacking in convincing definiteness as to the extent and circumstances of the grant.

> A. When the town was founded my father ceded the land to the town, and the principal citizens of the town donated the land to the priest.
>
> Q. According to your statement, then, your father donated the land to the town, and the principal citizens of the town in turn gave it to the priest?
>
> A. Yes, sir.
>
> Q. How do you know that the principal citizens of the town gave that land to the priest?

A. Because I saw it myself.

Q. Were you one of the principal citizens of that town?

A. Here in Tarlac, yes.

Q. Do you know whether the Gobernadorcillo of the town had any authority to donate public property, for instance the city hall, to the priest of the town, to the Pope or to anybody else?

A. Yes, sir.

Q. You mean as such Gobernadorcillo?

A. Not as Gobernadorcillo, but with the consent of the principal citizens of the town he could.

Q. Without even consulting His Majesty's Government?

A. I have always noticed that the principal citizens of the town, before making a requisition for a priest, would build the church and convent, and then the church authorities, if they deemed it convenient, would send a priest; and as the Commissioners of Victoria said that the people could support one they sent a priest and the principal citizens of the town turned everything over to him.

Q. Did you see that deed of transfer?

A. No, sir.

Q. Then, whence did you get that idea?

A. I was present when the principal citizens of Victoria turned the property over to him.

Q. When was that? Please state the date?

A. I don't remember, now (fols. 17–18).

And again—

Q. Was the delivery to the priest made only to give him control of the plaza or to transfer the ownership thereof to him?

A. I don't know anything about ownership; all that I know is that the prominent citizens said that they had delivered to the priest both the plaza and the church.

Q. Then you are unable to state to the court whether they actually transferred the ownership of the property or not?

A. I don't know, because I haven't seen any paper to that effect (fols. 37–38).

In the light of this and like evidence, the court below held:

> Even though all the remaining space of land which now forms the great plaza of the town of Victoria had been owned by the said Tañedo, it must be presumed that he waived his rights thereto for the benefit of the townspeople, since from the creation or establishment of the town, down to the present day, all the residents, including the curate of said town, have enjoyed the free use of said plaza; it has not been satisfactorily shown that the municipality or the principales of the town of Victoria had donated the whole of said land to the curate of Victoria or to the Catholic Church as alleged; * * * (fol. 69.)

There is, further, a complete failure to show that the *principales* had any power to surrender the public's ownership of this public plaza. The Philippine Supreme Court has ruled that the *principales* of a town had no power to convey title to public lands, (*Evangelista* v. *Bascos*, 5 Philippine, 255), and their political function was such as to preclude the as-

sumption that they possessed power to alienate municipal property vital to the municipal life.

> Under the Spaniards the *principalía* (principal persons) were understood to be the aggregate in each pueblo of all those individuals who had held office or were holding office or who paid a land tax of fifty dollars. The principalía constituted the voting class—no one could vote who was not a member of the principalía. (1 Census of the Philippine Islands, 365, note.)

It has been pointed out[1] that the *principalía*, therefore, seems to have constituted a class rather than an organized body, which view is corroborated by the fact that after a certain number of years of service, teachers and their assistants become entitled to be called principales. (46 Blair & Robinson's History of the Philippine Islands, 83.) The Philippine Supreme Court has found no power on the part of the *principales* to alienate this public plaza, and no such authority can be presumed from its alleged exercise. (See *Chavez* v. *United States*, 175 U. S., 552, 558.)

(b) We have shown that a public plaza is a species of property against which no prescriptive rights can be acquired, and the court below has so found. (fol. 69.) Assuming, however, the contrary, the evidence clearly justifies the finding of the court below against the plaintiff's claim. The record is lacking in clear evidence of a possession by the

[1] By the late Mr. Bowers in his brief (p. 33) in *Tiglao* v. *United States*, 215 U. S. 410.

plaintiff inconsistent with and exclusive of its public use. (Compare fols. 23, 27, 29, 30, with fols. 33, 38, 41, 44–45, 46, 51.) On the contrary, the evidence shows that the plaza was never divested of its public character and its unvarying use for public civic purposes. There is, therefore, lacking the evidence necessary to establish a title by adverse possession. (*Whitney* v. *United States*, 167 U. S., 529, 547; *Bergere* v. *United States*, 168 U. S., 66, 80; and *Hays* v. *United States*, 175 U. S., 248, 259.)

It is true that trees were planted partly by the curates and partly by the municipal authorities (fols. 23, 29, 32, 45, and 46). This, as the court below pointed out, does not evidence acts of private ownership, but rather a public use in an intent to embellish the plaza in the interest of the townspeople. (fol. 69.) And that some of the land was cultivated and the crops were gathered by priests and acolytes (fols. 26, 43) are at best acts of slight occupancy which this Court, under circumstances more favorable to public dispossession than is involved in the case of a public plaza, deemed too indecisive to establish a prescriptive right. (See *Bergere* v. *United States*, 168, U. S., 66, 80; and *Hays* v. *United States*, 175 U. S., 248, 259.)

In truth, all the various acts of dominion over the plaza exercised by the parish priests, without in any wise impairing the municipal ownership over the plaza, are referable to the close intimacy between government and church in the Philippines prior to the cession of the islands to the United States.

Therefore, we find this apparent mingling of authority, this joint exercise of official and unofficial influence on the part of the parish priests and the municipal authorities of the *pueblo*. Thus it is that the plaza was indiscriminately used for church and secular purposes. When it was needed for a religious procession or festival, the necessary administrative control over the plaza was doubtless exercised by the priest. On the other hand, in the case of a fair or a secular feast, the administrative direction was in the hands of the *gobernadorcillo*. This reconciles the apparently conflicting evidence as to the authority by whom control was exercised over the plaza, with just regard to the social and political conditions then prevailing in the islands. The controlling fact is that the undisputed evidence shows the plaza to have been utilized for all the public purposes, on all public occasions—religious or secular—and this use inevitably stamps the plaza as public property devoted to the public use.

(c) At all events, the plaintiff's claim rests on disputed acts of possession and the court below has found against it. Such a finding is a finding of ultimate fact, "and has the same legal effect as the finding of a jury in a special verdict, and the sufficiency of the evidence to support the finding cannot be considered upon this appeal." (*Smith* v. *Gale*, 144 U. S., 509, 525.)

3. We are unable to see that *Ponce* v. *Roman Catholic Church*, 210 U. S., 296, relied upon by the plaintiff, has any bearing upon the present case.

The Ponce case simply decided (a) the legal personality of the Roman church and its capacity to hold property in our Insular possessions; and (b) that the right of ownership of church property is unaffected by the fact that such property was acquired from gifts even of public funds. (See *Santos* v. *Roman Catholic Church*, 212 U. S., 463, 465.) In the *Ponce* case this Court dealt with the ownership of church edifices at all times exclusively devoted by the Church for worship. In this case we are dealing with a claim to a public plaza at all times devoted to *all* public purposes, civic and religious.

CONCLUSION.

The appeal and writ of error should be dismissed, or the judgment of the Supreme Court of the Philippines should be affirmed,

Respectfully submitted.

Felix Frankfurter,

Law Officer,
Bureau of Insular Affairs.

OCTOBER, 1912.

○

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No. 13.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

MGR. JEREMIAH J. HARTY, APPELLANT AND PLAINTIFF IN ERROR,

v.

THE MUNICIPALITY OF VICTORIA.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

NOTICE OF MOTION TO DISMISS UPON HEARING OF CASE.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1912

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

MGR. JEREMIAH J. HARTY, APPELLANT and plaintiff in error, *v.* THE MUNICIPALITY OF VICTORIA. } No. 149.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

NOTICE OF MOTION TO DISMISS UPON HEARING OF CASE.

Please take notice that upon the hearing of this cause a motion to dismiss for want of jurisdiction will be made on the ground that the value of the real estate in controversy by the issues of the case does not exceed the sum of $25,000 (act of July 1, 1902, 32 Stat., 695), as appears from the record in the case and from the affidavits of Ambrosio Rigor, Ignacio Villarta, and José Topacio, copies of which have been heretofore furnished you, and for the consideration of which leave of the honorable court will be asked.

FELIX FRANKFURTER,
Law Officer, Bureau of Insular Affairs.

To HENRY W. VAN DYKE,
Counsel for Appellant and Plaintiff in Error.

MARCH, 1911.

36311—12

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

MGR. JEREMIAH J. HARTY, APPELLANT AND Plaintiff in Error, *v.* THE MUNICIPALITY OF VICTORIA. } No. 149.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

ADDITIONAL AFFIDAVITS ON BEHALF OF APPELLEE AND DEFENDANT IN ERROR IN SUPPORT OF MOTION TO DISMISS FOR WANT OF JURISDICTION.

LOS ESTADOS UNIDOS DE AMERICA

ISLAS FILIPINAS.

DECLARACION JURADA.

Yo, José Topacio, Tesorero Interino de la Provincia de Tarlac, I. F., bajo juramento y en forma legal, por el presente hago constar líbre y espontáneamente lo siguiente:

Que la plaza pública del municipio de Victoria, Tarlac, cuyos linderos son como siguen: Al Norte,

Calle San Mariano; al Sur, calle Rizal; al Este, calle San Ambrosio y al Oeste, calle San Andrés, tiene una superficie de 84,548 metros cuadrados.

Que, ateniendome al precio á que actualmente se cotizan los solares dentro del casco de la poblacion de Victoria, Tarlac, declaro solemnemente que el valor de la mencionada plaza es ₱6,763.84. (₱800.00 por hectárea.)

Y para que asi conste firmo el presente affidavit en Victoria, Tarlac, hoy, 22 de Noviembre de 1911.

JOSÉ TOPACIO
Tesorero Interino, Provincia de Tarlac.

Firmado en presencia de
RAYMUNDO PEDRO
CIRILO EDRALÍN

Suscrito y jurado ante mi hoy 22 Nov. 1911, Victoria Tarlac, I. F. despues de exhibido su ced[a] No. 986831, En. 10, 1911

R/. No. 349 página 46, Libro 1[ro]

(Ante mi), VALENTIN GAMALINDA
Notario Público hasta
31 de Diciembre de 1912.

(Seal and int. rev. stamp.)

UNITED STATES OF AMERICA,
PHILIPPINE ISLANDS,
City of Manila.

I, Ignacio Villamor, Attorney-General for the Philippine Islands, do hereby certify that Valentin Gamalinda, a notary public in and for the Province of Tarlac, Philippine Islands, taking the ac-

knowledgment of the foregoing instrument bearing date of the 22nd day of November, 1911, is in fact the official he purports to be; that is to say, a notary public in and for the Province of Tarlac, Philippine Islands, and as such authorized by the laws of the Philippine Islands to take acknowledgments and administer oaths; and I further certify that the signature and notarial seal of the said Valentin Gamalinda attached to the foregoing instrument are genuine.

Given under my hand and official seal this 25th day of November, 1911.

[SEAL.] IGNACIO VILLAMOR,
Attorney-General.

[Translation.]

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS.

SWORN STATEMENT.

I, José Topacio, Acting Treasurer of the Province of Tarlac, P. I., having been duly sworn, do hereby freely and spontaneously depose:

That the public square of the municipality of Victoria, Tarlac, the boundaries whereof are as follows: To the north, Calle San Mariano; to the south, Calle Rizal; to the east, Calle San Ambrosio, and to the west, Calle San Andrés, has an area of 84,548 square meters.

That, basing my valuation on the current price of lots within the *población* of Victoria, Tarlac, I

solemnly declare that the value of said square is ₱6,763.84. (₱800.00 per hectare).

In witness whereof I set my hand to the present affidavit at Victoria, Tarlac, this 22nd day of November, 1911.

(Sgd.) JOSÉ TOPACIO,
Acting Treasurer, Province of Tarlac.

Signed in the presence of

(Sgd.) RAYMUNDO PEDRO.
(Sgd.) CIRILO EDRALIN.

Subscribed and sworn to before me, this 22nd day of November, 1911, at Victoria, Tarlac, P. I., affiant having exhibited his cédula No. 986831, of January 10, 1911.

R. No. 349, page 46, 1st Book.
(Seal and int. rev. stamp).

(Sgd.) VALENTIN GAMALINDA,
Notary Public until December 31, 1912.

LOS ESTADOS UNIDOS DE AMERICA

ISLAS FILIPINAS

DECLARACION JURADA.

Yo, Ignacio Villarta, casado, mayor de edad y vecino de este municipio de Victoria, provincia de Tarlac, I. F., propietario y Ex-Presidente del citado municipio, bajo juramento y en forma legal, por el presente hago constar líbre y espontáneamente lo siguiente:—

Que la plaza publica del municipio de Victoria, Tarlac, cuyos linderos son como siguen: Al Norte, Calle San Mariano; al Sur, calle Rizal; al Este, calle San Ambrosio y al Oeste, calle San Andres, tien una superficie de 84,548 metros cuadrados.

Que, ateniendome al precio a que actualmente se cotizan los solares dentro del casco de la poblacion de Victoria, Tarlac, declaro solemnemente que el valor de la mencionada plaza es ₱6,763.84 (₱800.00 por hectarea)

Y para que asi conste firmo el presente affidavit en Victoria, Tarlac, hoy, 22 de Noviembre de 1911.

IGNACIO VILLARTA

Firmado en presencia de
HILARIO VILLA
CIRILO EDRALÍN

Suscrito y jurado ante mi hoy en Victoria, Tarlac, 22 de Nov. 1911, despues de haberme exhibido su cedula personal No. F 993108, Apr. 29, 1911, Victa.

R/. No. 351, pagina 46, Libro 1°

(Ante mi,) VALENTIN GAMALINDA
Notario Público hasta 31 de Diciembre de 1912.

(Seal and int. rev. stamp.)

UNITED STATES OF AMERICA,
PHILIPPINE ISLANDS,
City of Manila.

I, Ignacio Villamor, Attorney-General for the Philippine Islands, do hereby certify that Valentin

Gamalinda, a notary public in and for the Province of Tarlac, Philippine Islands, taking the acknowledgment of the foregoing instrument bearing date of the 22nd day of November, 1911, is in fact the official he purports to be; that is to say, a notary public in and for the Province of Tarlac, Philippine Islands, and as such authorized by the laws of the Philippine Islands to take acknowledgments and administer oaths; and I further certify that the signature and notarial seal of the said Valentin Gamalinda attached to the foregoing instrument are genuine.

Given under my hand and official seal this 25th day of November, 1911.

[SEAL.] IGNACIO VILLAMOR
Attorney-General.

[Translation.]

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

SWORN STATEMENT.

I, Ignacio Villarta, married, of age, a resident of this municipality of Victoria, Province of Tarlac, P. I., property-owner and late municipal president of said municipality, having been duly sworn, depose freely and spontaneously:

That the public square of the municipality of Victoria, Tarlac, the boundaries whereof are as follows: To the north, Calle San Mariano; to the south, Calle Rizal; to the East, Calle San Ambrosio, and to the west, Calle San Andrés, has an area of 84,548 square meters.

That, basing my valuation on the current price of lots within the población of Victoria, Tarlac, I solemnly declare that the value of said square if ₱6,763.84 (₱800.00 per hectare).

In witness whereof I set my hand to the present affidavit at Victoria, Tarlac, this 22nd day of November, 1911.

(Sgd.) IGNACIO VILLARTA.

Signed in the presence of

(Sgd.) HILARIO VILLA.

(Sgd.) CIRILO EDRALIN.

Subscribed and sworn to before me at Victoria, Tarlac, this 22nd day of November, 1911, affiant having exhibited to me his cédula personal No. F. 993108, April 29, 1911, Victoria.

R. No. 351, page 46, 1st Book.

(Seal and int. rev. stamp.)

(Sgd.) VALENTIN GAMALINDA.

Notary Public until December 31, 1912.

LOS ESTADOS UNIDOS DE AMERICA

ISLAS FILIPINAS.

DECLARACION JURADA.

Yo, Ambrosio Rigor, mayor de edad, casado y vecino del municipio de Victoria, provincia de Tarlac, I. F., propietario y Ex-Vice Presidente del citado municipio, bajo juramento y en forma legal, por el presente hago constar líbre y espontáneamente lo siguiente:

Que la plaza pública del municipio de Victoria, Tarlac, cuyos linderos son como siguen: Al Norte, calle San Mariano; al Sur, calle Rizal; al Este, calle San Ambrosio y al Oeste, calle San Andres, tiene una superficie de 84,548 metros cuadrados.

Que, ateniendome al precio á que actualmente se cotizan los solares dentro del casco de la poblacion de Victoria, Tarlac, declaro solemnemente que el valor de la mencionada plaza es ₱6,763.84 (₱800.00) por hectárea.

Y para que asi conste firmo el presente affidavit en Victoria, Tarlac, hoy, 22 de Noviembre de 1911.

AMBROSIO RIGOR

Firmado en presencia de

HILARIO VILLA

CIRILO EDRALÍN

Suscrito y jurado ante mi hoy en Victoria, Tarlac, á 22 de Noviembre de 1911 despues de haberme exhibido su cedula personal No. F 991390, Feb. 20, 1911, Victoria Tarlac, I. F.

R/. No. 350, pagina 46, Libro 1ro

(Ante mi,) VALENTIN GAMALINDA

Notario Público hasta 31 de Diciembre de 1912.

(Seal and int. rev. stamp.)

UNITED STATES OF AMERICA,
PHILIPPINE ISLANDS,
City of Manila.

I, Ignacio Villamor, Attorney-General for the Philippine Islands, do hereby certify that Valentin

Gamalinda, a notary public in and for the Province of Tarlac, Philippine Islands, taking the acknowledgment of the foregoing instrument bearing date of the 22nd day of November, 1911, is in fact the official he purports to be; that is to say, a notary public in and for the Province of Tarlac, Philippine Islands, and as such authorized by the laws of the Philippine Islands to take acknowledgments and administer oaths; and I further certify that the signature and notarial seal of the said Valentin Gamalinda attached to the foregoing instrument are genuine.

Given under my hand and official seal this 25th day of November, 1911.

[SEAL.] IGNACIO VILLAMOR
Attorney-General.

[Translation.]

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS.

SWORN STATEMENT.

I, Ambrosio Rigor, of age, married, and a resident of the municipality of Victoria, Province of Tarlac, P. I., property-owner and late vice-president of said municipality, having been duly sworn, freely and spontaneously depose:

That the public square of the municipality of Victoria, Tarlac, the boundaries whereof are as follows: To the north, Calle San Mariano; to the south, Calle Rizal; to the east, Calle San Ambrosio,

and to the west, Calle San Andrés, has an area of 84,548 square meters.

That, basing my valuation on the current price of lots within the *población* of Victoria, Tarlac, I solemnly declare that the value of the said plaza is ₱6,763.84 (₱800.00) per hectare.

In witness whereof I set my hand to the present affidavit at Victoria, Tarlac, this 22nd day of November, 1911.

(Sgd.) AMBROSIO RIGOR.

Signed in the presence of

(Sgd.) HILARIO VILLA

(Sgd.) CIRILO EDRALIN.

Subscribed and sworn to before me this 22nd day of November, 1911, at Victoria, Tarlac, affiant having exhibited to me his cédula personal No. F. 991390, Febr. 20, 1911, Victoria, Tarlac, P. I.

R. No. 350, page 46, 1st Book.

(Seal and int. rev. stamp.)

(Sgd.) VALENTIN GAMALINDA,

Notary Public until December 31, 1912.

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